



August 30, 2012

Ex Parte

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

RE: Petition of Telcordia Technologies, Inc. to Reform Amendment 57 and to Order a Competitive Bidding Process for Number Portability Administration, and Petition of Telcordia Technologies, Inc. to Reform or Strike Amendment 70, to Institute a Competitive Bidding for Number Portability Administration, and to End the LLC's Interim Role in Number Portability Administration Contract Management, WC Docket Nos. 07-149, 09-109

Telephone Number Portability, WC Docket No. 95-116

Dear Ms. Dortch:

On August 28, 2012, Richard Jacowleff, Louise Tucker, and Kelley Shields of Ericsson, Inc. ("Ericsson" or "Telcordia"),¹ Madeleine Findley of Wiltshire & Grannis LLP, and I met with Julie Veach, Lisa Gelb, William Dever, Ann Stevens, Marilyn Jones and Travis Litman, of the Wireline Competition Bureau, to discuss Telcordia's concerns regarding impediments to competitive bidding in the proposed Request for Proposal ("RFP") and associated Technical Requirements Document ("TRD") and Vendor Qualification Document for the next Local Number Portability Administrator(s) ("LNPA").² Telcordia also discussed the importance of resolving the pending North American Numbering Council ("NANC") dispute referral regarding inclusion of certain URI fields in the NPAC database and the dispute's relationship to the RFP, which was referred by the NANC in June 2011.³

¹ Ericsson closed its acquisition of Telcordia Technologies, Inc. on January 12, 2012, but for ease of reference in the above-captioned proceedings, we refer to Telcordia.

² See *Wireline Competition Bureau Seeks Comment on Procurement Documents for the Local Number Portability (LNP) Administration Contract*, Public Notice, DA 12-1333 (rel. Aug. 13, 2012).

³ See Letter from the Hon. Betty Ann Kane, Chair, North American Numbering Council, to Sharon Gillett, Chief, Wireline Competition Bureau (June 20, 2011), *available at* http://nanc-chair.org/docs/mtg_docs/Jun11_NANC_Transmittal_Letter_Telcordia_Dispute.pdf.

During the meeting, Telcordia made the following points:

- Telcordia's objective has been and continues to be ensuring a fair, open and transparent competitive bidding process.
- Telcordia is and will ensure that as an LNPA it remains neutral but it is concerned that the neutrality provisions of the draft RFP and Vendor Qualification Document ("VQD") lack sufficient clarity regarding how neutrality will be evaluated, at what point in the procurement process, by which authorized entity, and with what, if any, cure period for any perceived shortcoming. Some of the proposed neutrality provisions in the RFP and VQD go beyond the rules, and were developed in response to and thus are tailored to the unique circumstances of the incumbent LNP provider. These provisions may not be appropriate for bidders with other corporate structures. Instead, Telcordia urges the Commission to separate the neutrality review from the Technical, Management, and Price review. The two reviews can run contemporaneously, which will provide the following competitive and efficiency benefits: 1) it will permit the Commission to make any necessary determinations regarding neutrality issues and base any necessary requirements on an individual LNPA's corporate structure; 2) it will permit a "cure" period to address any perceived neutrality shortcomings with respect to "undue influence," a period that does not definitively exist in the proposed RFP; and 3) it will permit multiple Respondents to engage in full and robust competition on the merits throughout the bid-evaluation process, preventing the problem of single-source procurement which has been an issue affecting the LNPA selection since the contract was first (and last) competitively let in 1997.
- Telcordia asked the Commission to consider the extent to which each neutrality requirement should apply to subcontractors. This determination should be made well before bids are submitted, because the conditions could exclude subcontractors due to the burdens associated with some safeguards. Given that the Respondent would be ultimately responsible for neutral performance, a sensible approach would be to reduce the proposed neutrality criteria on subcontractors to a minimum set of bright-line requirements.
- Telcordia is concerned that policy decisions, including neutrality decisions, vendor disqualification, and vendor selection decisions, , may be made by the North American Portability Management LLC Future of Number Portability Administration Center Subcommittee ("FONPAC") without explanation. The FONPAC should not be able to reject a response or a vendor. The process as outlined in the Order limits the FONPAC to recommendations, and does not grant it decisional authority.
- Telcordia urged the Commission to revise the RFP so that a Best and Final Offer cannot be solicited from only one Respondent, but must be solicited from multiple Respondents. This would preclude even inadvertent replication of the selective, non-transparent and thus non-competitive negotiation processes that have plagued prior LNPA contract negotiations, and would promote a fair, efficient, and transparent competitive process.
- Telcordia expressed concern that the draft RFP limits confidentiality protection for bid submissions to such a degree that Respondents may be unwilling or unable to comply.

As written, the draft RFP declines to treat any of Respondent's information, except for pricing information, as confidential or subject to any restrictions on its use and disclosure.⁴ If bidder cannot receive protection of trade secret information and if trade secrets become the property of the LLC by participation in the RFP, and shared generally, this will chill participation, particularly because companies compete in other markets. Rather, as with Commission proceedings generally, a FOIA standard should be used, and use of the IP should be limited to evaluation for award of the contract. This would not limit use by the NAPM, LNPA Selection Working Group ("SWG"), or NANC for the purpose of the procurement or subsequent contract administration.

- Additionally, the information requests in the draft procurement documents are so broad as to require Respondents to submit information about all other contractual relationships in which they may be involved, which conflicts with non-disclosure provisions in such agreements.⁵
- Telcordia discussed concerns with the Bid Process Overview in the draft RFP which, as drafted, appears to create a situation in which a Respondent could decline to submit regional bids in favor of a single, take-it-or-leave-it national bid. This bid process raises a significant risk of "gaming" the bidding to exclude the potential for a multivendor award. That would reduce the options available to the SWG and Commission with respect to the final award, making the final contract less advantageous than it otherwise could be.⁶
- Telcordia also urged the Commission to resolve the pending NANC Dispute regarding the potential inclusion of certain URI fields in the NPAC. The NANC referred this dispute to the Commission in June 2011 after failing to reach consensus. Resolution of the dispute will provide important and needed clarity to the LNPA selection process

⁴ See Draft 2015 LNPA Request for Proposal, *available at* <http://apps.fcc.gov/ecfs/document/view?id=7022004164> (last accessed Aug. 30, 2012) ("RFP"); Draft 2015 Vendor Qualification Document, *available at* <http://apps.fcc.gov/ecfs/document/view?id=7022004166> (last accessed Aug. 30, 2012) ("VQD").

⁵ As an example, both the RFP and VQD require a Respondent to submit information demonstrating that it is "not involved in a contractual or other arrangement that would impair its ability to administer the NPAC/SMS fairly and impartially." RFP at § 4.2; VQD at § 3.4. This information request, which appears to have no root in prior FCC orders or rules, is subject to no limiting principle and could potentially sweep in every contractual relationship throughout a Respondent or, more troubling still, a potential subcontractor entity.

⁶ See, e.g., Ex Parte Letter of John T. Nakahata, Counsel to Telcordia Technologies, Inc., to Marlene H. Dortch, Secretary, FCC, Docket Nos. 95-116, 07-149 & 09-109 (filed Mar. 20, 2012) (providing a fuller discussion of the risks of this bidding structure); William P. Rogerson, *An Economic Analysis of Competitive Procurement Process Design Options for NPAC Services*, Sept. 13, 2011, submitted as attachment to Ex Parte Letter of John T. Nakahata, Counsel to Telcordia Technologies, Inc. to Marlene H. Dortch, Secretary, FCC, Docket Nos. 95-116, 07-149 & 09-109 (filed Sept. 15, 2011) (analyzing the impacts on competition of single source vs. multiple vendor procurement designs).

Ms. Marlene H. Dortch

August 30, 2012

Page 4 of 4

because it will permit Respondents to craft bids based on settled understandings about what information appropriately may be included in the database. Given the current questions about incorporating URI or ENUM fields in the database, potential Respondents cannot craft their LNPA bids with certainty. It remains Telcordia's position that the Commission's rules limit the use of NPAC and while it may or may not be appropriate to expand those uses, it requires a change to the rules via the appropriate proceeding.

Telcordia shares the desire that the LNPA procurement documents be finalized and issued expeditiously, but believes that both expediency and fairness can be satisfied through the changes that Telcordia has suggested.

A copy of this letter is being filed in the above-captioned dockets.

Sincerely,

A handwritten signature in black ink, appearing to read "John T. Nakahata".

John T. Nakahata
Madeleine V. Findley
Counsel to Telcordia Technologies, Inc.

cc: Julie Veach
Lisa Gelb
William Dever
Ann Stevens
Marilyn Jones
Travis Litman